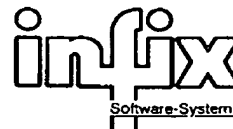


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Art Unit: 2192
Examiner: Chuck O. Kendall

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Date: 21. December 2007

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Request to Withdraw the Finality of the Last Office Action (MPEP § 706.07 (d))

Application Number: 10/506,500

Confirmation Number: 2839

Applicant: Okrongli, Oliver

Filing date: 03 September 2004

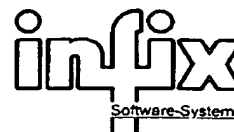
Sir:

In view of the proposed USPTO continuation practice (Claims and Continuations Final Rule), applicant requests reconsideration of the finality of the rejection of the last Office action without counting the RCE against this application.

The final Office action dated 02 May 2007 rejects independent claim 1, citing Thomsen in view of Simonyi. Since the Thomsen and Simonyi references fail to show expression references using dynamic binding, claim 1 is patentable. Applicant's after final reply dated 29 June 2007 showed the patentability of claim 1 without amendment. The rejection was therefore premature (MPEP § 706.07 (d)).

For reasons beyond applicant's control, no Office action was issued in the 4 months following applicant's timely after final reply. This contravenes MPEP § 714.13 III, which states:

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Date: 21. December 2007



An examiner is expected to turn in a response to an amendment after final rejection within 10 calendar days from the time the amendment is received by the examiner. A reply to an amendment after final rejection should be mailed within 30 days of the date the amendment is received by the Office.

In response to applicant's status inquiries the examiner seemed to agree that the former rejection would not be maintained but advised applicant by phone about possible rejections of claim 1, citing new grounds (see applicant's reply dated 03 December 2007). Since applicant did not amend claim 1, in this case a new non-final rejection would have been in order (MPEP § 706.07 (a)).

With no Office action forthcoming, in order to avoid abandonment, applicant filed an RCE at the end of the statutory reply period. Lacking an Office response considering applicant's initial after final reply, the amendment accompanying the RCE had to be filed without complete information on the basis of a possible rejection. This bears the risk of unnecessary amendments which might inadvertently restrict applicant's right to claim the invention.

Finally, the proposed changes in USPTO continuation practice prohibit more than one RCE without showing. If these changes were to become effectual, applicant would effectively be denied the sole opportunity to base an RCE without showing on a complete prosecution history record in accordance with MPEP § 707.07 (f).

As the USPTO might not have the statutory authority to correct this error at a later stage, applicant is concerned that leaving this error uncorrected now might ultimately amount to a denial of due process promised by the Fourteenth Amendment of the United States Constitution.

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For the foregoing reasons, applicant requests

- a) the withdrawal of the finality of the rejection dated 02 May 2007 in accordance with MPEP § 706.07 (d),
- b) the issuance of a new or corrected Office action,
- c) the reinstatement of the application at its previous stage, so that the RCE is not counted against the application,
- d) the refund of fees paid in conjunction with the RCE.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Oliver Okrongli'.

Oliver Okrongli
Applicant